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10/772,948	02/05/2004	Wayne Gerald Morley	F7696(V)	5303

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EXAMINER	
CHAWLA, JYOTI	

ART UNIT	PAPER NUMBER
1761	

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10/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/772,948	MORLEY, WAYNE GERALD	
	Examiner	Art Unit	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 September 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) *12 and 14* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11 and 13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/10/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Applicant's election of Group I (claims 1-11 and 13) in the reply filed on September 11, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 12 and 14 have been withdrawn from consideration owing to a non-elected invention and claims 1-11 and 13 are pending and examined in the application.

Claim Objections

Claims 1-11 and 13 are objected to because of the following informalities:
Claims contain words, such as, "flavoured" that need to be corrected to "flavored" to conform to US spelling acceptability standard. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
Claim 1 as recited is indefinite for the recitation of "A kit for preparing salads comprising at least one ingredient (I) which is cooked and at least one fruit, vegetable or cereal product, wherein the kit comprises" as it is unclear as to what is included in the kit, i.e., does the kit comprise of a cooked ingredient and one fruit/vegetable/cereal product or does the kit comprise of the flavored cooking paste and a dressing or some other things. Thus it is unclear as to what is part of the kit as recited and what the kit can be used for. Clarification and correction is required.

Regarding claims 1-11 and 13, the recitation of "(I)" in parenthesis renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The parenthesis and the letter "I" or Roman numeral I as recited is unclear, as it is not clearly stated as to what I is and whether or not it is a part of the kit or just an explanation of the intended use of the kit. Correction is required.

Claim 13 provides for the use of the kit of claims 1-11, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 13 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim 8 is indefinite for the recitation of "the total fat content of the cooking paste and the dressing combined is in the range of from 5 to 60% wt". It is unclear as to how the proportion of total fat is being determined, is it the combination of the sauce and the dressing in its entirety or is it part of the sauce being combined with part of the dressing or some other combination of the sauce and dressing or is it the proportion of the total fat content of the food prepared using the kit. Clarification and/or correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

A) Claims 1-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomlinson (US 2001/0043972) in view of the combination of Errass et al (US 4497803), Bams et al (US 4650690).

Regarding claims 1 and 13, Tomlinson teaches of an individual portion sized food container system for packaged food portions, such as salads, vegetables, fruits, cereals and meats. The reference teaches of foods that desirably need the addition of various types of salad dressings, sauces gravies, condiments and other liquids (Page 1, paragraphs [0003 to 0009]). Thus the reference teaches of an individual sized kit or system for salad as instantly claimed. Tomlinson teaches of cheese, pasta sauce, ketchup, barbeque sauce, gravies, etc., (Page 1, paragraph [0009]), thus the reference teaches of the flavored cooking sauce or paste as instantly claimed. Tomlinson also teaches of salad dressing, mayonnaise, yogurt, cream etc., (Page 1, paragraph [0009 and 0053-0055]) as instantly claimed.

The reference is silent as to the fat content of the sauce and the salad dressing as instantly claimed, however, sauces, mayonnaise and salad dressings are generally emulsions. Further, sauces and pastes and salad dressings with variable fat content, such as, low-fat, no-fat or fat-free etc., were known in the art at the time of the invention. Therefore, it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad

based on the desired, flavor, recipe, thickness, fat content, nutritional value or calorie content of the salad. One of ordinary skill would have been motivated to do so in order to enhance the appeal of the packaged salad or food article to the intended clientele. Further, addition of salad dressing and sauce or paste having a certain amount of fat ratio would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

Regarding claims 1-5 and 13, Tomlinson teaches of salad dressing, mayonnaise and sauces. Tomlinson is silent about the emulsion being oil-in water with fat content in the range of 10-40% by weight as instantly claimed. However, oil-in-water emulsion salad dressings were known at the time of the invention and salad dressings and sauces are oil-in water emulsions as evidenced by Errass. Errass teaches of oil-in water emulsions (Abstract and Column 1, lines 5-10 and Column 2, lines 40-50 and claims) as instantly claimed. Errass teaches of dressings that are oil-in-water emulsions and also have the fat content ranging from 10-50% (Table, Column 2). Thus sauces and dressings as oil-in-water emulsions with fat content on the range recited by the applicant were known at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the kit as taught by Tomlinson and include a salad dressing with flavor and fat content in the desired range of 10-50% as taught by Errass in order to make the salad having a dressing that has the desired satiety value along with smoothness and creaminess to the final product.

Regarding claims 1, 6 and 13, Tomlinson teaches of cheese and other cooking sauces or pastes but is silent as to the fat content of the sauce. Bams et al, hereinafter Bams, teaches of water-in-oil-in-water emulsions that make cooking sauces etc. Bams teaches of sauces with 10-80% of oil as instantly claimed. Bams teaches that sauces with the fat content in the instantly claimed range were known at the time of the invention. To select a sauce based on the fat/calorie content and based on the flavor/taste would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention. Therefore, one of ordinary skill would have been motivated to modify

Tomlinson's kit and include a sauce with fat content in the range of 10% and up to 80% as taught by Bams in order to make the salad/meal kit as taught by Tomlinson more filling and substantial and also in order to provide the satiety value of a meal to the consumer. Further, inclusion of a salad dressing and sauce or paste having a certain amount of fat ratio would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.

Regarding claim 7 Tomlinson as modified by Errass and Bams teaches (claims 1-6) would have the fat ratio of the dressing and the sauce in the instantly claimed range of the applicant.
Regarding claim 8, modified Tomlinson teaches of a kit with the total fat content of the cooking paste and the dressing combined is in the instantly claimed range. (Also see the rejection under 35 USC 112).

Regarding claim 9, Tomlinson teaches of at least one cooked ingredient as meat, cooked vegetables (Page 1, Paragraphs [0003 and 0008-0009]) as instantly claimed.

Regarding claim 10, Tomlinson teaches of salad leaves (Page 1, Paragraphs [0003 and 0008-0009]) as instantly claimed.

Regarding claim 11, Tomlinson is silent about the weight ratio of the cooking paste to dressing is in the range of from 1:5 to 2:1 as instantly claimed. However, addition of cooking sauce and dressing in variable amount was known in the art at the time of the invention based on the desired flavor and consistency in the finished product. Thus to include sauce and dressing in a kit in an optimal amount would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention, e.g., to include more of sauce and less dressing if the salad has more meat or vegetables that are cooked with the sauce or to include a greater amount of dressing if the salad kit includes more of the salad leaves and raw vegetables, would have been a matter of personal choice. Therefore it would be obvious to one of ordinary skill to modify the kit

as taught by Tomlinson in order to accommodate the desire of the consumer. One would have been further motivated to modify the relative amounts of sauce and dressing in order to customize the kits according to the relative amounts of cooked vs. non-cooked foods in the kit. Further, inclusion of a specific proportion of salad dressing and sauce or paste to the packaged food would not lend patentable distinction to the claims, absent any clear and convincing evidence and or arguments to the contrary.
B) Claims 1, 9, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over OVOFIT EIPRODUKTE GMBH (DE 20008456 U1 Abstract and figures).

Ovofit teaches of a convenient salad kit where the bowl of salad (claim 10) is sold with a cooked egg (packaged separately from the salad) (claim 9) and a number of other blister packs containing other accompaniments as shown in figure 2. The reference also teaches of salad dressing package 15 (Figure 2 and description of figure 2 on pages 3-4 of the patent). The abstract of the reference does not provide details of the fat content of the salad dressing or sauce etc., however sauces and salad dressings with variable fat contents were known in the art at the time of the invention. Therefore it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad based on the desired, fat content, nutritional value or calorie content of the salad. One of ordinary skill would have been motivated to do so in order to enhance the appeal of the packaged salad or food article to the intended clientele.

C) Claims 1, 2-3, 9, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over GREISINGER N (DE 20104287 U1 Abstract and figures).
Greisinger teaches of a convenient meal or salad kit where the container of salad (Figures 1-3)(claim 10) is sold with meat, sausage etc., (claim 9) and a number of other blister packs containing other accompaniments as shown in figure 2. The reference also teaches of mayonnaise and or sauce in a suitable mixing ratio to make the recipe (Abstract). The abstract of the reference does not provide details of the fat content of the salad dressing or sauce etc., however mayonnaise is an emulsion and mayonnaise

and sauces with variable fat contents were known in the art at the time of the invention. Therefore it would have been a matter of routine determination for one of ordinary skill in the art at the time of the invention to add a sauce and/or dressing with the salad based on the desired, fat content, nutritional value or calorie content of the salad. One of ordinary skill would have been motivated to do so in order to enhance the appeal of the packaged salad or food article to the intended clientele.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jyoti Chawla
Examiner
Art Unit 1761

KEITH HENDRICKS
PRIMARY EXAMINER